

S. JAYARAMAN v. A.P. SETHURAMAN

S. JAYARAMAN

...Appellant

A.P. SETHURAMAN

...Respondent

Case No: REVISION PETITION NO. 2247 OF 2017

Date of Judgement: 11 December 2023

Judges:

SUBHASH CHANDRA

PRESIDING MEMBER

For Appellant: MS. S. MAHENDRAN, ADVOCATE

For Respondent: MR RANGARAJAN R

Facts:

Petitioner purchased two medicines (Benadryl and Zyrtec) from respondent's medical shops and was given 5% and 18% discount respectively instead of advertised 18% discount on all medicines. Petitioner alleges deficiency in service as discount rates were not uniform across respondent's shops. Respondent claims the discounts were promotional schemes up to 18% on Over-The-Counter medicines and 5% on cosmetics. Lower fora (District and State Commission) dismissed petitioner's complaint and appeal stating that providing discounts was at discretion of the shops.

Court's Opinion:

Commission notes it cannot reassess or reappraise evidence in revisional jurisdiction and can only interfere if findings are

perverse or lower fora acted without jurisdiction. Refers to Supreme Court judgments stating revisional powers should be used only when a prima facie error appears in impugned order. Observes petitioner has not established any jurisdictional error, irregularity or perversity in orders of lower fora. No illegality or infirmity found in impugned State Commission's order warranting interference.

Arguments: Petitioner:

Respondent advertised 18% discount on all medicines but only gave 5% and 18% discount on purchased medicines. Discount rates not uniform across respondent's shops constitutes deficiency in service.

Respondent:

Discount schemes were promotional upto 18% on Over-The-Counter medicines and 5% on cosmetics. Providing discounts was at discretion of shops, not a fixed rate. Petitioner files cases with commercial motive to waste time of Commission.

Referred Laws/Sections:

Consumer Protection Act 1986, Section 21(b) – Revisional powers of National Commission. Supreme Court judgments on scope of revisional jurisdiction and interference with concurrent findings of fact.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1.This revision petition under section 21 (b) of the Consumer Protection Act, 1986 (in short, 'the Act') as sails the order dated 10.04.2017 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (in short, 'the State Commission') in First Appeal no. 268 of 2015 arising from the order dated 04.05.2015 in Consumer

Complaint no. CCSR no.72 of 2015 before the District Consumer Disputes Redressal Forum, Coimbatore (in short, 'the District Forum').

2. Since these six revision petitions have been filed against a common order dated 10.04.2017 passed by the State Commission and raise the same grievances, we propose to decide these by passing a common order taking RP no. 2247 of 2017 as the lead case.

3. The brief facts of the case, as alleged by the petitioner, are that although the respondent had advertised that they will give 18% discount on MRP Rate for the medicine Benadryl and Zyrtec etc., it only provided 18% discount for one medicine and 5% discount for another medicine. The petitioner states that on 05.10.2014, the petitioner purchased Benadryl medicine from the respondent's shop in P N Pudur shop where a discount of 10% was given on the said medicine. However, the petitioner alleges that when the petitioner purchased the same medicine from the shop in Vadavalli a discount of 18% was given. The petitioner states that since different rates of discount, i.e., 10% and 18% were given for the same medicine in different shops, he sought a clarification from the respondent within 10 days. The petitioner further states that the respondent in the said two shops at Pudur and Vadavalli had kept a display board stating that 'For all medicines 18% discount will be given on MRP price'. For the medicines Benadryl and Zyrtec purchased on 04.11.2012 they had given a discount of 5% and 18% respectively. It is, therefore, alleged that the respondent committed deficiency in service. As the respondent did not file reply to the clarification sought by the respondent, the petitioner filed a consumer complaint (CCSR no.72 of 2015) before the District Forum which, vide its order dated 04.05.2015, dismissed the complaint stating that the petitioner/complainant was in the habit of filing cases with commercial motive and waste the precious time of the court. The District Forum also imposed a fine of Rs.1000/- to be deposited with the Consumer Legal Service Authority.

4. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission, Chennai. The State Commission also dismissed the appeal of the petitioner and confirmed the order of the District Forum. The petitioner has assailed this order by way of

above revision petitions.

5. I have heard Mr S Mahendran, Amicus Curiae appearing on behalf of the petitioner and Mr Rangarajan, R, proxy counsel appearing with authority letter for the respondent and have carefully considered the material on record.

6. The finding of the District Forum is as under:

.....The unfair trade practice is comply only if they sold the medicine with excess amount on MRP rate. Discount on MRP rate is only depends upon the respondent's willingness and is not compulsory. As like this, the petitioner already filed a case in CC no.15 of 2013 before the Hon'ble Court and the same is dismissed by this Court and the petitioner filed an appeal in FA No . 388 of 2013 before the State Consumer Forum and the same also dismissed by the said forum. Since the petitioner is having the habit of filing more cases like this with commercial motive and waste the precious time of the Court, this Hon'ble Court ordered to pay a fine amount of Rs.1000/- to the Consumer Legal Services Authority within 04.06.2025.

7. The State Commission in its order dated 12.05.2017 concluded as under:

4. Aggrieved by the impugned order, the appeal has been preferred and in spite of service of notice, there is no appearance for the respondent/ opposite party. It is well settled that the appeal cannot be allowed merely because there is no representation for the respondent/ opposite party and the respondent was called absent. Even if the respondent is not present, the appeal should be decided on merit. In the instant case, the medicine Benadryl has been sold by the respondent herein to the complainant with 5% discount on MRP price as held by the District Forum.

If the medicine is sold for an amount of more than the MRP rate then it should be against the mandate of Consumer Protection Act. Here in this case, the respondent's medical shop has sold the medicine by giving 5% discount on the MRP price.

It is further seen from the counter filed by the respondent in a similar case before the District Forum, that for these kinds of medicines only 5% discount is given that too in order improves their

sales. They also further stated that these medicines would not fetch any profit, if it is sold with discount of more than 5%.

Since giving discount is the discretion of opposite party, the complainant cannot claim such things as a matter of right.

In the above circumstances, we are of considered opinion that the order of the District Forum does not suffer from any defect and is liable to be confirmed as such.

In the result, the appeal is dismissed by confirming the order of the District Forum dated 04.05.2015.

8. The case of the petitioner is that the respondent advertised a discount on medicines of 18% on medicines but sold them at different rates of discount which were usually lower than the rate of discount advertised. It is also contended that the respondent did not follow a uniform rate of discount across its shops located in different areas in the city. According to the petitioner this constituted deficiency in service under the Consumer Protection Act.

Per contra, the respondent submitted that the scheme of discounts offered by it was a promotional scheme and offered upto 18% on 'Over The Counter' (OTC) medicines sold without prescriptions and 5% on items classified as 'cosmetics'. It is his contention that the discount was at the discretion of the shop as it was not a fixed discount.

9. The learned counsel for the respondent in his written synopsis has stated he was the proprietor of several medical shops in and around Coimbatore District, Tamil Nadu and had advertised that all medicines would be given 18% discount. However, the State Commission and the District Forum had rightly held that no deficiency was found in the service provided by the respondent. Learned counsel for the respondent further states that the petitioner has not filed any documentary evidence to prove that the respondent had advertised a discount of 18% on all the medicines. The learned counsel for the respondent states that the respondent with good will had advertised a discount of up to 18% on medicines, in order to minimize the cost for the general public. He further submits that the advertisement was carried out for the local public in local language, i.e., 'Tamil'. It is submitted

that the two medicines purchased (Benadryl and Zyrtec) were given a discount of 5% and 18% as they are two different categories. It is contended that Benadryl was an Over The Counter (OTC) medicine and Zyrtec was non-OTC is sold against prescription. He states that no prescription was required for OTC medicine and as such there was no pre-fixed discount amount. Further, the learned counsel for the respondent submits that the petitioner was a repeat offender in filing similar petitions with commercial motives in order to waste the precious time of the Commission. Learned counsel for the petitioner submits that the revision petition is liable to be dismissed.

10. From the record it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two for as are based on evidence led by the parties and documents on record. Although the respondent was served, he did not appear before the State Commission on the date of final hearing when the matter was pronounced. The present revision petition is, therefore, an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

11. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower fora are concurrent on facts. It can interfere with the concurrent findings of the fora below only on the grounds that the findings are either perverse and based on a material irregularity or that the fora below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some prima facie error appears in the impugned order. Different

interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

12. The Hon'ble Supreme Court in Rubi (Chandra) Dutta (2011) 11 SCC 269 dated 18.03.2011 has held that:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."

13. Reiterating this principle, the Hon'ble Supreme Court in Lourdes Society Snehanjali Girls Hostel & Ors vs H & R Johnson (India) Ltd., & Ors (2016) 8 SCC 286 dated 02.08.2016 held:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons."

14. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors, Civil Appeal No. 3408 of 2019 dated 05.04.2019 again held as under:

“12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

15. In the instant case the foras below have pronounced orders which have dealt with all the contentions of the petitioner which have been raised before me in this revision petition. The petitioner has not been able to establish that the orders of the fora below were either in jurisdictional error or suffered from a material irregularity. In view of the settled proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, these petitions are liable to fail.

16. No illegality or infirmity or perversity is therefore found in the impugned order warranting interference of this Commission. The present revision petition is, therefore, found to be without merit and are accordingly dismissed and we affirm the order(s) of the District Forum dated 04.05.2015.

17. Revision petition nos. 2248 to 2252 of 2017 are also disposed of in terms of this order. Parties are left to bear their own costs. Pending IAs, if any, also stand disposed of along with this order.